

FCC MAIL SECTION

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-291

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Cambridge and St. Michaels,  
Maryland) RM-8133

## NOTICE OF PROPOSED RULE MAKING

Adopted: November 25, 1992; Released: December 14, 1992

Comment Date: February 4, 1993

Reply Comment Date: February 19, 1993

By the Chief, Allocations Branch:

1. C. W. A. Broadcasting ("petitioner"), permittee of Station WFBR(FM), Channel 232A, Cambridge, Maryland, has filed a petition for rule making proposing the reallocation of Channel 232A from Cambridge to St. Michaels, Maryland, as that community's first local transmission service.<sup>1</sup> Petitioner also seeks modification of its construction permit (BMPH-920828JK) for Station WFBR(FM) to specify the change of community of license from Cambridge to St. Michaels, Maryland.

2. In support of its proposal, petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules.<sup>2</sup> Petitioner expresses a desire to provide a first local transmission service to St. Michaels, Maryland. Petitioner states that the allotment of Channel 232A to St. Michaels will result in a preferential arrangement of allotments. According to petitioner, Cambridge will continue to be served by Stations WCEM(AM) and WCEM(FM). Petitioner points out that Cambridge also receives service from Station WCEI(FM), Easton, Maryland, and a major part of Cambridge receives service from Station WAAI(FM), Hurler, Maryland.

<sup>1</sup> Although petitioner's request indicates that the original copy of its proposal was signed, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3910, n.41 (1990). Petitioner is requested to rectify this omission

3. We believe the public interest will be served by proposing the reallocation of Channel 232A from Cambridge, Maryland, to St. Michaels, Maryland, as it would provide St. Michaels with its first local transmission service. Channel 232A can be allotted to St. Michaels, Maryland, at petitioner's proposed site in compliance with the Commission's spacing requirements.<sup>3</sup> Petitioner is requested to provide information regarding reception service gains and losses that would result from adoption of this proposal. Petitioner is also requested to provide any other information regarding the public interest benefits of this proposal. Channel 232A is short spaced to Channel 232A, Salisbury, Maryland, Station WICO-FM. However, Station WICO-FM was ordered to operate on Channel 248A in MM Docket 84-1043.<sup>4</sup> The channel substitution at Salisbury was made to accommodate the allotment of Channel 232A at Cambridge. The *Report and Order* in that proceeding indicated that the ultimate permittee of FM Channel 232A at Cambridge was responsible for reimbursement for the expenses incurred by Station WICO-FM in changing channels.<sup>5</sup> Petitioner is reminded that, pursuant to that *Report and Order*, it is required to reimburse Station WICO-FM, Salisbury, Maryland, for these expenses, regardless of whether this proposal is adopted. The grant of a license for Channel 232A at St. Michaels, Maryland, may be withheld pending the issuance of a license for Station WICO-FM, on Channel 248A. We shall propose to modify the construction permit for Station WFBR(FM) to change the community of license and specify operation on Channel 232A at St. Michaels, Maryland. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 232A at St. Michaels or require the petitioner to demonstrate the availability of an additional equivalent channel at that community.

4. In view of the above, we believe it would serve the public interest to seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below:

City	Channel No.	
	Present	Proposed
Cambridge, Maryland	232A, 292A	292A
St. Michaels, Maryland	---	232A

in its comments.

<sup>2</sup> See *Amendment to the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *pet. for recon. granted in part*, 5 FCC Rcd 7094 (1990).

<sup>3</sup> The coordinates for Channel 232A at St. Michaels are 38-49-17 and 76-17-27.

<sup>4</sup> See 50 FR 34466, August 26, 1985.

<sup>5</sup> The construction permit for Station WFBR(FM) is conditioned on Station WICO-FM changing channels. Program tests for Station WFBR(FM) cannot commence until program tests for Station WICO-FM commence on Channel 248A. A license will not be granted for Station WFBR(FM) on Channel 232A until a license is granted for Station WICO-FM on Channel 248A.

5. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Prettyman Broadcasting Company  
Station WICO-FM  
P.O. Box 909  
Salisbury, Maryland 21801

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **February 4, 1993**, and reply comments on or before **February 19, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Charles W. Adams, Jr., President  
C.W.A. Broadcasting, Inc.  
35 Solomon's Island Road  
Annapolis, Maryland 21401

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

## FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.